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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,866	02/26/2002	Gregg S. Sutton	CRD-0992	1387
27777	7590	06/10/2004	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			THALER, MICHAEL H	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/083,866

Applicant(s)

SUTTON ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/22&6/17/02, 11/18/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

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The disclosure is objected to because of the following informalities: Reference numeral 390 is used to denote two different parts. Appropriate correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, lines 20-21 (of the page), it is unclear if "variable" means that 1) each of the openings can have a diameter within the given range (This includes the possibility that all of the openings have the same diameter in a particular filter membrane.) or 2) the diameters of the openings vary in a particular filter membrane. In claim 3, although it can be seen how fibers can be attached to other fibers or other members, it is not seen how the fibers can be attached to the holes (the open spaces).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the

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differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaganov et al. (5,876,367) in view of either Blum (4,230,119) or Miller et al. (3,889,685). Kaganov et al., in figure 6 show a proximal member (the right branch of tubular member 10 within vessel 61, i.e. the portion of member 10 within vessel 61 which extends from its right extreme end to the location where it intersects with the upper branch labeled 14 in figure 3), a distal member (the left branch of tubular member 10 within vessel 61), the proximal and distal members each having a first lumen 37 and a second lumen (the main passageway within the member) and an inflatable balloon 35, a middle section (the middle section of tubular member 10 which includes upper branch 14) having a third lumen (the main lumen in the middle section which extends along the longitudinal axis of the vessel) in fluid communication with each second lumen, a fifth lumen (the lumen of branch 14) in fluid communication with a second port (at valve 16) and a vascular filter system 41, 42 comprising guidewire 41, a filter membrane support structure (e.g. the umbrella frame described in col. 9, lines 64-67) and a filter membrane having holes of diameters which are "variable", as best

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understood, depending on the pore size which is chosen for the particular filter as described in col. 9, lines 7-37. Kaganov et al. fail to show a single inflation port in fluid communication with each first lumen in order to permit simultaneous inflation of both balloons. However, Blum teaches using a single inflation port (at 12, 13) for inflation of both balloons simultaneously and Miller et al. teach that two ports may be replaced by a single port connected to both balloon conduits apparently in order to permit faster and more convenient inflation of both balloons (col. 4, lines 8-12). It would have been obvious to connect each Kaganov et al. lumen 37 together to form a single inflation port for inflation of both balloons simultaneously in order to permit faster and more convenient inflation of both balloons in view of either of the secondary references. With this modification, the Kaganov et al. middle section would include a fourth lumen in fluid communication with each first (inflation) lumen as claimed. As to claim 2, Kaganov et al. fail to disclose the openings being non-uniformly spaced. However, it is old and well known in this art to so space filter openings in order to optimize the filtering process. It would have been obvious to make the openings of the Kaganov et al. filter non-uniformly spaced so that it too would have this advantage. As to claim 3, as best

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understood, Kaganov et al. disclose fibers (the threads which make up the filter, noting the term "thread" in col. 8, line 1 and that threads, by definition, include fibers).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
6/8/04



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731